

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-625

October 31, 2000

VERIZON ADVANCED DATA, INC.¹
Petition for Finding of Public
Convenience and Necessity to
Provide Facilities-Based and Resold Local
Exchange and Interexchange Service

ORDER GRANTING AUTHORITY
TO PROVIDE LOCAL EXCHANGE
SERVICE AS A RESELLER AND
FACILITIES-BASED AND RESOLD
INTEREXCHANGE SERVICE; AND
APPROVING SCHEDULE OF RATES
AND TERMS AND CONDITIONS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, the Commission grants Verizon Advanced Data, Inc. (VAD or Company) the authority to provide local exchange service as a reseller throughout the State of Maine; facilities-based and resold intrastate interexchange service in the State of Maine; other data services (including dedicated and unswitched services); and approves the Company's Terms and Conditions and Rate Schedules. We also exempt VAD from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On June 29, 2000, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, VAD filed a petition with the Commission requesting authority to provide facilities-based and resold local exchange telephone service, and facilities-based and resold interexchange service in the State of Maine. Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to provide service in a location where a utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

¹This case was originally docketed under the name Bell Atlantic Network Data, Inc. During the pendency of this proceeding, the name of the applicant was changed to Verizon Advanced Data, Inc.

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting Verizon Advanced Data the authority to provide local exchange and interexchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

VAD's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local and interexchange services in Maine.

II. SERVICE TERRITORY

A. Interexchange Service Authority

VAD has requested authority to provide facilities-based and resold interexchange service throughout the state. We grant that authority.

B. Local Service Authority

VAD has requested authority to provide facilities-based local exchange service in the State of Maine. Facilities-based service includes service provided through the use of unbundled network elements obtained from an incumbent local exchange carriers. At this time VAD is not planning to offer any local exchange service and does not have the facilities or ability to provide facilities-based local exchange service in Maine.

In all of our recent orders granting authority to provide facilities-based local exchange service, we have limited the service territory to those areas where the utility has the facilities (or will have them within six months) to provide that service. VAD does not presently have facilities that would be necessary to provide local exchange service in areas served by incumbent LECs other than Verizon-Maine. Accordingly, we will not grant authority at this time to provide facilities-based local exchange service.

VAD has also requested authority to provided local exchange service as a reseller throughout the state. We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is

facilities-based service and is not resale. We grant VAD's authority to provide local exchange service through resale throughout the State.

If VAD wishes to provide facilities-based local exchange service in the future, it shall seek such approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. VAD's proposed service territory for facilities-based local exchange service shall be limited to those areas in which it will be ready to provide facilities-based switched local exchange service within six months. It is not necessary for a CLEC with existing authority to present a full application in order to request additional service territory authority. The Commission will act expeditiously on any such application and revisions of Terms and Conditions. With any such application, VAD shall include information establishing a readiness to provide facilities-based local exchange service within six months in the specifically identified additional areas.

C. Other Services

VAD's application states that it:
initially intends to provide broadband packet data services,
such as Frame Relay and Digital Communications Services.
Petitioner does not at this time intend to provide local dial
tone service

. . .

Petitioner does not intend to offer switched voice services at
this time.

VAD was formerly part of Verizon New England, Inc. and other operating companies owned by Verizon. The Federal Communications Commission (FCC), as a condition of approving the Bell Atlantic-GTE merger that resulted in Verizon, required Verizon to separate its advanced data services into a structurally separate affiliate. In Maine, VAD will be providing service presently provided by Verizon New England d/b/a Verizon-Maine, primarily through virtually-collocated facilities formerly owned by Verizon-Maine. VAD has represented that it can provide the services that were formerly being provided by Verizon-Maine without the need for additional central office (NXX) codes.

Some or all of the described services may be dedicated services that do not require switching. Dedicated facilities may carry both local and interexchange traffic. VAD has represented that the services described in this Part II.C. do not require the use of NXX codes.

Because of VAD's description of its service, we grant authority to it necessary to provide services such as those described in its application (that cannot be characterized as "local" or "interexchange") throughout the State.

III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

We allow the terms and conditions proposed by VAD to go into effect. VAD has used the Commission's standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's petition, Terms and Conditions, and Rate Schedules, and they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in VAD's Terms and Conditions and the Commission's Rules or a statute, the rule or statute will control. Included in the Terms and Conditions is a provision stating that in the event of such a conflict, the statute or the Commission's Rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of VAD's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by VAD to go into effect. We note that the services that will be offered by VAD are presently provided by Verizon-Maine. Under the Verizon-Maine alternative form of regulation (AFOR), the rates for those services have been "non-core" rates. Verizon-Maine may change those rates at any time, and those rates have no effect on the level of Verizon-Maine's cores rates. Effectively, therefore, the rates for the services that will be offered by VAD are already subject to minimal regulation.

IV. INTERCONNECTION AGREEMENT(S)

In order to provide local exchange service, a CLEC must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for VAD's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

On August 8, 2000, in Docket No. 2000-560, the Commission approved an agreement between VAD and Bell Atlantic-Maine (now Verizon-Maine) pursuant to 47 U.S.C. § 252. As a condition of providing local exchange service, VAD must comply with the terms of any interconnection agreements that it has reached with any ILECs that have been approved by the Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153 (37), the "rural exemption" of 47 U.S.C. § 251 (f) will apply. All of Maine's independent incumbent local exchange carriers are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254" Although some of the service territory we grant today is statewide, as a practical matter VAD cannot offer local

exchange service in the service territory of a rural ILEC until such time as that ILEC's rural exemption is terminated.

If VAD executes an interconnection agreement(s) with ILECs(s) other than Verizon-Maine, it shall obtain approval of that agreement by this Commission.

V. PAYMENT OF ACCESS CHARGES

Our approval of VAD's application to provide interexchange service in Maine is conditioned on the payment of access charges to local exchange carriers (LECs) who have on file with the Commission approved access charge rate schedules. Because VAD is a facilities-based interexchange carrier, it must pay access charges directly to local exchange carriers.

The Commission has also granted authority to VAD to provide interexchange service as a switchless (non-facilities-based reseller.)² Switchless resellers do not pay access charges to local exchange carriers. Instead, access charges are paid by an underlying facilities-based interexchange carrier. As a condition of granting authority to a switchless reseller to provide intrastate service in Maine, its underlying facilities-based carrier must also have authority to provide intrastate service in Maine. VAD has stated that it does not intend to offer switchless resold intrastate interexchange service at this time, and that it does have an underlying carrier. Prior to offering such service, it shall notify the Commission of its underlying carrier. The underlying carrier must pay access charges to all LECs upon which it originates or terminates intrastate interexchange service. If VAD begins to use another authorized underlying carrier, it shall notify the Commission as required by the ordering paragraphs.

VI. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing service, VAD must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. VAD shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Pursuant to sections 11(A) and 12(A) of Chapter 280, which govern carriers' interexchange activities, VAD is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which govern approvals for reorganizations and contracts

²We define switchless resellers as entities which do not own, lease, or control any switching facilities, or private lines, that it will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

with affiliated interests. VAD has requested a waiver from the requirements of Chapter 210 and from 35-A M.R.S.A. §§ 707 and 708. We grant all of the waivers subject to the conditions described below. Because VAD's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to all of the requirements of those rules and statutes.

The Company must report its annual intrastate gross operating revenues, its revenues derived from sales to other carriers, and its annual intrastate minutes for use for the purpose of determining its regulatory assessment.³ If VAD resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales. Pursuant to Chapter 280, § 11(B), VAD

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

In addition, pursuant to the stipulation in *Verizon New England d/b/a Verizon-Maine, Request for Approval of Affiliated Interest Transaction for the Transfer of Advanced Services Operations to a Structurally Separate Affiliate*, Docket No. 2000-747, approved contemporaneously with this Order, Verizon-Maine has agreed that the Commission has the authority to consider VAD's revenues, expenses and investments in future rate proceedings for Verizon-Maine. Accordingly, VAD has agreed that it will maintain records so as to allow upon request the separation of Maine-specific revenues and costs of VAD. Maintenance of those records is a condition of granting the Chapter 210 waiver to VAD.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) (for interexchange service) and by this Order (for all other service) are subject to the notice requirements contained in Chapter 280, §§ 12(B) and (C) and in the ordering paragraphs below. The exemptions from 35-A M.R.S.A. §§ 707 and 708 do not apply to Verizon-Maine, which is an affiliated interest of VAD. Verizon-Maine must continue to comply with the requirements of sections 707 and 708 (subject to any exemptions that have been granted to it) because it is an incumbent local exchange carrier, and the Commission actively regulates its rates.

VAD must inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in the ordering paragraphs below. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

³The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

VII. OTHER REQUIREMENTS

VAD shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in the ordering paragraphs below.

VIII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Verizon Advanced Data, Inc. to provide in the State of Maine: competitive local exchange telephone service as a reseller; facilities-based and resold intrastate interexchange service; and other services described in Part II.C. of this Order;
2. Exempt VAD from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year;
3. Exempt VAD from the approval requirements of 35-A M.R.S.A. §§ 707 (except as provided below) and 708, but VAD shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707 (1)(A), that results in a merger, sale or transfer of a controlling interest of VAD or of any entity that owns more than 50% of VAD. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), VAD shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. VAD shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, VAD shall amend its rate schedules and terms and conditions to reflect any change in identity;
4. Order that VAD's proposed Terms and Conditions and Rate Schedules (Tariff No. 1), attached to this Order, shall be effective on the date of this Order;
5. Order that VAD, or an underlying facilities-based interexchange carrier authorized to provide interexchange service in Maine, shall pay interexchange access charges as required by approved access rate schedules filed by local exchange carriers.

VAD shall notify the Commission of the identity of its underlying carrier prior to commencing interexchange service as a reseller, and shall notify the Commission of any change in its underlying carrier within 30 days following any change in its underlying carrier. Any underlying carrier used by VAD must have the authority to provide intrastate interexchange service in Maine. VAD shall immediately inform the Commission and all local exchange carriers in the State of Maine from which VAD will

be purchasing access services if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic, at which time VAD shall begin to pay access charges directly to those local exchange carriers that have approved access charge schedules on file with the Commission; and

6. Order that VAD shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20%.

Dated at Augusta, Maine, this 31st day of October, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.